



Pre-Trial Process

November 8, 2018



Overview

- Pretrial Services Agencies Update
- Pre-Trial Process
- Bail Bondsmen



Pretrial Services Agencies Update

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Pretrial Services Agencies Update

- There are currently 33 pretrial services agencies serving 75% (100 of 134) of Virginia's localities, which accounts for approximately 90% of the state's population.
- 32 of these agencies received approximately \$10.6 million in state funding for FY19.
 - In January 2018, Culpeper County began a pretrial services program with local funds.

Sources: Department of Criminal Justice Services and the U.S. Census 2017 population estimate.

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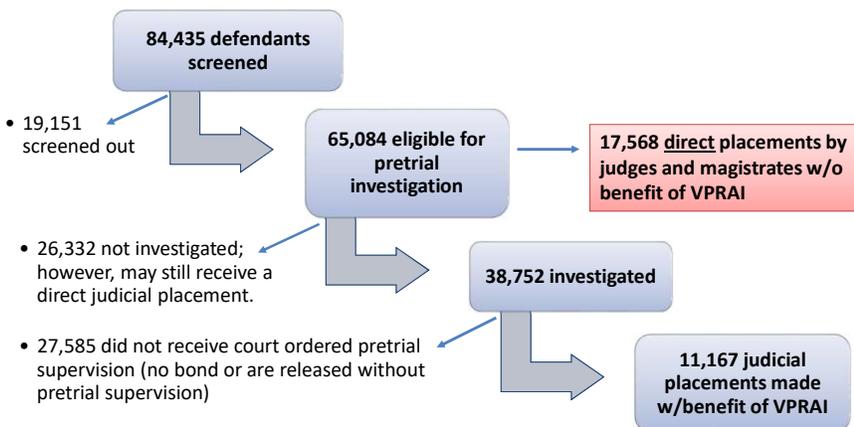
Pretrial Services Agencies Update

- During 2018, Crime Commission staff worked closely with the Department of Criminal Justice Services (DCJS) and stakeholders to address concerns identified with the administration and operation of pretrial services agencies:
 - Provided oversight of the DCJS Pretrial Stakeholder Work Group; and,
 - Developed and disseminated over 2,000 surveys as part of a needs assessment of stakeholders.
 - The needs assessment supported staff findings from last year and identified new areas of concern.



Pretrial Services Agencies

Pretrial Services Agency Placement Progression, FY18



Source: Graphic prepared by Virginia State Crime Commission staff based upon data provided by the Virginia Department of Criminal Justice Services, FY18 PTCC Merged Monthly Report.



Pretrial Services Agencies Update

- Areas of concern could be addressed through legislation, but may be further informed by the findings of the Pre-Trial Data Project, such as:
 - Information is not being provided to magistrates as required by Code;
 - Investigations are not being conducted for all defendants eligible for pretrial services; and,
 - Release recommendations provided to judges lack credibility in certain instances.



Pre-Trial Process



Pre-Trial Process

Overview of the Pre-Trial Process in Virginia



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graph LR; A[Charge] --> B[Magistrate]; B --> C[First Appearance]; C --> D[Bond Hearing]
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Pre-Trial Process

- Nearly all arrested defendants are initially taken before a magistrate.
 - Procedures at magistrate offices are generally uniform across the Commonwealth.
- The magistrate conducts a bond hearing for the defendant and must consider specific factors listed in the Virginia Code.
 - Magistrates commonly use the “Checklist For Bail Determinations” (DC-327) form to record information obtained during this process.

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Pre-Trial Process

- Bond determinations are made on a case-by-case basis by magistrates and judges using statutory requirements and discretion.
- A defendant may have multiple bond hearings before different judicial officers as his case moves through the pre-trial process.



Bond Hearing Scenarios



Scenario #1 (Magistrate)

Jerry (40) is charged with 2nd offense DUI (misdemeanor). He was arrested for 1st offense DUI (misdemeanor) ten days ago and was released on an unsecured bond at that time with no other conditions. His blood alcohol content in the current case was .20 (two and half times the legal limit). He relocated from New York to Virginia six months ago to live with his brother. Two months ago he got a construction job making \$18 hour and just got his own apartment last week. He was homeless prior to moving to Virginia. He has been convicted two times of being intoxicated in public within the last year but has no other criminal history.

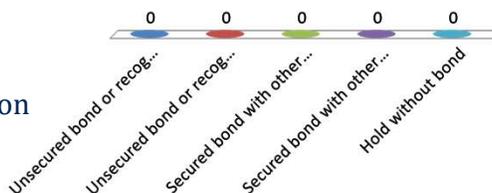
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Scenario #1 (Magistrate)

What conditions of release, if any, are appropriate?

- A. Unsecured bond or recognizance
- B. Unsecured bond or recognizance with pretrial services supervision
- C. Secured bond with other conditions, including pretrial services supervision
- D. Secured bond with other conditions, not including pretrial services supervision
- E. Hold without bond



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Scenario #2 (Magistrate)

George (28) is charged with misdemeanor trespass for loitering behind a convenience store and misdemeanor resisting arrest for attempting to pull his arm away from the officer while being handcuffed. George is well known to the police who describe him as a “frequent flier.” He has no financial resources and no known family living in the area. He sometimes stays at a local homeless shelter where he occasionally assists with maintenance and housekeeping. He has a lengthy, non-violent criminal history (misdemeanors only) including mostly trespass and alcohol-related offenses. He has been charged four times over the last five years with failing to appear but has only been convicted one time.

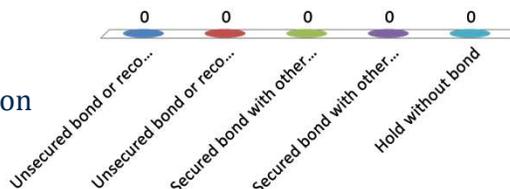
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Scenario #2 (Magistrate)

What conditions of release, if any, are appropriate?

- A. Unsecured bond or recognizance
- B. Unsecured bond or recognizance with pretrial services supervision
- C. Secured bond with other conditions, including pretrial services supervision
- D. Secured bond with other conditions, not including pretrial services supervision
- E. Hold without bond



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Scenario #3 (Magistrate)

Newman (51) is charged with misdemeanor domestic battery. The arresting officer states that Newman struck his wife one time with his fist over the right eye causing bruising and swelling. The two were arguing about household finances. An emergency protective order has also been issued which prevents Newman from having contact with his wife or returning to their home. Newman is a native of the community and lives with his wife of 22 years and their two children, ages 14 and 16. He and his wife own a small business (a hardware store) that they inherited 15 years ago, their home, several vehicles, and a savings account worth \$25,000. Newman manages the hardware store and his wife teaches at a local nursery school. He has been convicted two times of violating a protective order (2007 and 2010).

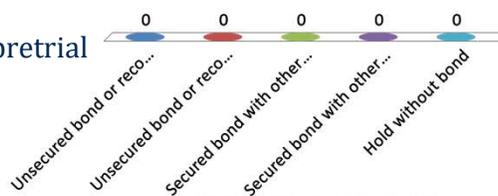
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Scenario #3 (Magistrate)

What conditions of release, if any, are appropriate?

- A. Unsecured bond or recognizance
- B. Unsecured bond or recognizance with pretrial services supervision
- C. Secured bond with other conditions, including pretrial services supervision
- D. Secured bond with other conditions, not including pretrial services supervision
- E. Hold without bond



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Scenario #4 (Magistrate)

Elaine (32) is charged with felony grand larceny. She stole a \$1,000 handbag from Macy's. She has lived within the community her entire life. She started a job last week at Target making \$11 per hour, but prior to that had been unemployed for two years and has relied upon her friends and family for financial support. She lives with her grandmother. She was convicted three years ago of felony "worthless check". You are unable to determine whether the Commonwealth's Attorney will concur with setting a recognizance or unsecured bond.

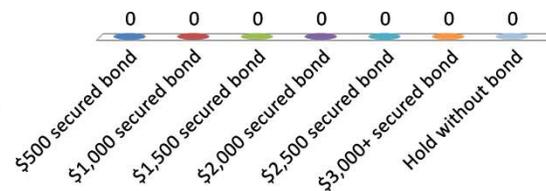
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Scenario #4 (Magistrate)

What conditions of release, if any, are appropriate?

- A. \$500 secured bond
- B. \$1,000 secured bond
- C. \$1,500 secured bond
- D. \$2,000 secured bond
- E. \$2,500 secured bond
- F. \$3,000+ secured bond
- G. Hold without bond



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Scenario #5, Part 1 (Magistrate)

Last month Kramer (20) was arrested during a traffic stop for felony possession of a schedule I/II narcotic (oxycodone) and was released on an unsecure bond. He failed to show for his first appearance and has now been arrested on a felony failure to appear charge. According to Kramer, he stays “most nights” with his mother, a busy real estate agent. Kramer works part time at Hardees, earning \$10 per hour and attends community college. He has no other financial resources. He successfully completed first offender probation (18.2-251) for possession of marijuana 18 months ago, and the court dismissed that charge. You are unable to determine whether the Commonwealth’s Attorney will concur with setting a recognizance or unsecured bond.

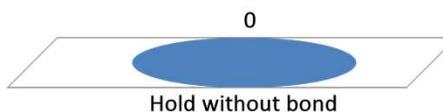
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Scenario #5, Part 1 (Magistrate)

What conditions of release, if any, are appropriate?

A. Hold without bond



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Scenario #5: Part 2 (Judge)

Continuing the previous scenario, at Kramer's first appearance on the felony fail to appear charge, his aunt, a well-respected, retired Virginia State Trooper, states that Kramer may live with her until the conclusion of his case. She states that she will ensure that he complies with whatever conditions of release that the court requires and that she will personally ensure that he maintains his employment and education, and that he will appear at all of his court dates. The Commonwealth's Attorney opposes setting a recognizance or unsecured bond.

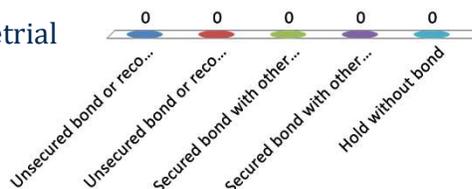
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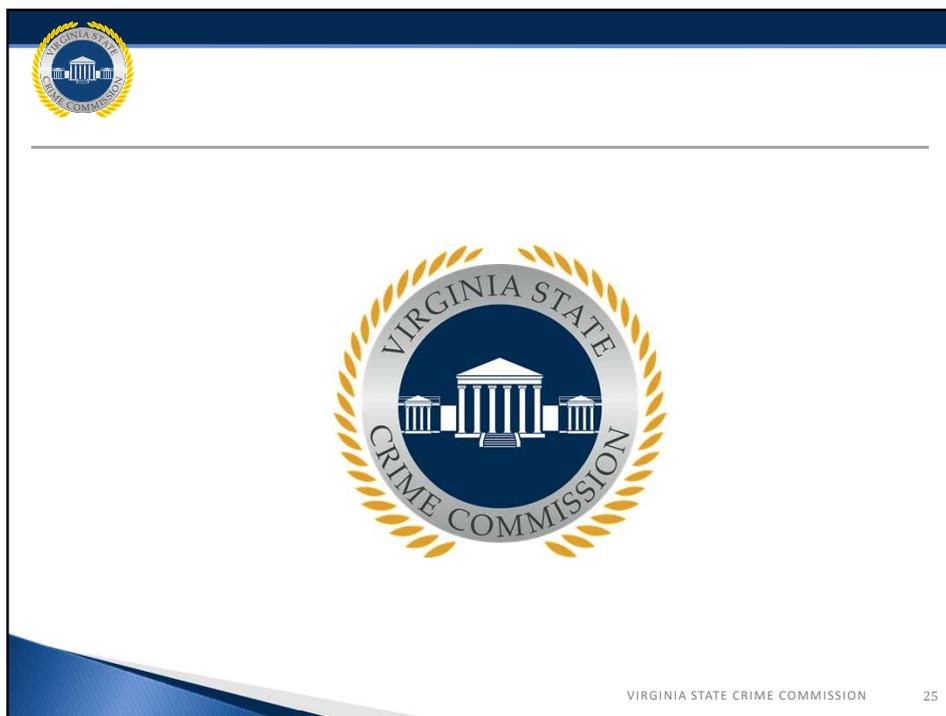
Scenario #5: Part 2 (Judge)

What conditions of release, if any, are appropriate?

- A. Unsecured bond or recognizance
- B. Unsecured bond or recognizance with pretrial services supervision
- C. Secured bond with other conditions, including pretrial services supervision
- D. Secured bond with other conditions, not including pretrial services supervision
- E. Hold without bond



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Pre-Trial Process

- There is currently a national debate regarding the use of secured bond (cash bail).
- The premise of this debate is that poor defendants are being detained because they do not have the resources to post their bond.
- The number of indigent defendants in Virginia's criminal justice system is unknown.

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Pre-Trial Process

- Pretrial services supervision has been proposed as an alternative to cash bail.
- In Virginia, many pretrial services agency supervision placements in FY18 were in conjunction with a secured bond:*
 - 59% (16,964 of 28,711) secured bond; and,
 - 41% (11,747 of 28,711) PR/unsecured bond.

* Source: Virginia Department of Criminal Justice Services, PTCC Case Management System. Note: 24 cases did not have a bond type recorded in PTCC for FY18.



Pre-Trial Process

- The pre-trial process varies by locality, and can differ amongst courts within the same locality.
- First appearance procedures vary by:
 - Time waiting to appear before a judge;
 - Parties present;
 - Use of technology; and,
 - Consideration of bond.



Pre-Trial Process

- Bond hearing procedures vary by:
 - Frequency of court dockets during the week;
 - Limits on the number hearings per day; and,
 - Local rules and procedures.



Pre-Trial Process

- Statewide regulations do not exist for the use of GPS or similar tracking devices on a pre-trial basis.
 - A defendant can be ordered to pay the costs of electronic monitoring.
 - The availability, vendor, and fees (\$3-\$15/day) for these devices vary across the Commonwealth.



Pre-Trial Process

Recommendation 1: Require the Office of the Executive Secretary of the Supreme Court of Virginia (OES) to track the number of criminal defendants statewide found to be indigent pursuant to Va. Code § 19.2-159 by creating a mandatory field for all Court Case Management Systems (CMS).

- Further require that the attorney type (e.g., public defender, court-appointed counsel, retained, *pro se*) be a mandatory field for all CMS.



Pre-Trial Process

Recommendation 2: Enact a provision in the Virginia Code to require magistrates to complete the existing “Checklist For Bail Determinations” (DC-327) form and transmit it to the court.

- This codifies current practice in the field.



Pre-Trial Process

Recommendation 3: Enact a provision in the Va. Code to require DCJS to develop regulations relating to the use and fees for GPS and similar tracking devices on a pre-trial basis.



Pre-Trial Process

Recommendation 4: Request Crime Commission staff to convene focus groups to address issues of uniformity within the pre-trial process, including:

- First appearances;
- Bond hearings;
- Timely sharing of information, such as bail condition violations;
- Conditions of supervision and fees; and,
- Monitoring of pre-trial jail populations.



Bail Bondsmen



Bail Bondsmen

- Bail bondsmen have a large presence during the pre-trial process, but are rarely included as stakeholders in discussions about the process.
- Bail bondsmen guarantee a defendant's appearance at court proceedings, but are not responsible for supervision of court-ordered conditions of bond.
 - Bail bondsmen can add their own conditions of supervision on a defendant without the approval of a judicial officer.



Bail Bondsmen

There are currently 375 licensed bail bondsmen:

- Surety: an agent on behalf of an insurer that guarantees a bond (n=238).
- Property: pledges real property, cash, or certificates of deposit as security for a bond (n=51).
 - Are permitted to write bonds up to four times the value of the real estate, cash, or certificates of deposit.
- Agent: given power of attorney to act on behalf of a licensed property bail bondsmen (n=56).

Note: An additional 30 individuals have a combination of these types of licenses.



Bail Bondsmen

- Oversight of bail bondsmen is performed by two state agencies based upon the type of license.
 - Surety bail bondsmen:
 - State Corporation Commission – licensed as a property and casualty insurance agent
 - DCJS – licensed as a surety bail bondsman
 - Property and Agent bail bondsmen:
 - DCJS – licensed as a property or agent bail bondsman



Bail Bondsmen

- The criminal background licensing restrictions are less stringent for bail bondsmen than for other occupations regulated by DCJS.
 - Per the Virginia Code, only a felony conviction will disqualify a person from being licensed as a bail bondsman, unless the applicant's civil rights have been restored.
 - The Code does not include any disqualifying misdemeanor convictions.



Bail Bondsmen

- Under current law, a bail bondsman can obtain a *capias* for the arrest of the principal (defendant) for any reason.
 - A judicial officer is required to issue the *capias* upon the request of the bail bondsmen.



Bail Bondsmen

- Data systems relating to bonds and bail bondsmen do not interface.
 - A query cannot be run to identify an individual bail bondsman's outstanding bonds.
 - Bondsmen submit a monthly list of their bonds to DCJS, but there is no way to readily verify if the report is accurate and complete.
 - The number and amount of bond forfeitures statewide is unknown.
- Data concerns could be addressed by the proposed stakeholder group on statewide case tracking.



Bail Bondsmen

- Areas of concern identified include:
 - DCJS does not regulate bail bonding companies.
 - Local practices vary as to whether a show cause is issued to forfeit the bond when a defendant fails to appear.
 - Not all courts notify DCJS when a bail bondsman fails to pay forfeiture as ordered.
 - A bail bondsman's license is not automatically suspended due to an outstanding order to pay a forfeiture.



Bail Bondsmen

Recommendation 5: Amend Va. Code § 19.2-149 to require that a bail bondsman provide a basis for obtaining a surety's *capias* and to require the judicial officer to find that the defendant is a danger to public safety or a risk of flight before issuing the *capias*.

- Also, request that OES modify the "Surety's *Capias* and Bailpiece Release" forms (DC-331 and CC-1305) to include a required section for the bail bondsman to note the basis for arrest.



Bail Bondsmen

Recommendation 6: Increase the penalty for carnal knowledge of a defendant by a bail bond company owner or agent from a Class 1 misdemeanor to a Class 6 felony under Va. Code § 18.2-64.2.



Discussion